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James Harold Gray

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/611,453
Filing Date: June 30, 2003
Appellant(s): GRAY ET AL.

Bruce E. Stuckman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/24/2010 appealing from the Office action mailed 9/21/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 14-19, 45-50 and 76-80 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of

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rejection to be reviewed on appeal.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

Blackketter et al. (U.S. Patent No. 7,237,253) published June 26, 2007

LeGall et al. (U.S. Patent No. 6,081,263) published June 27, 2000

Field et al. (U.S. Patent No. 6,018,764) published January 25, 2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14-17, 19, 45-48, 50 and 76-79 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Blackketter et al. (U.S. Patent No. 7,237,253).

Referring to claim 14, Blackketter discloses receiving at a user device an indicator signal from an interactive television service provider's network (**see step 300 in Figure 9**), the indicator signal indicating availability and location of alternative content (**see Figure 11 for the transmitted table of information (hot key signal) including data that indicates availability and location of alternative content**) and containing data representing an indicator form (**see Figure 11 for the table containing a web address**).

Blackketter discloses determining, at the user device and independent of any request by a user of the user device for the alternate content (**see steps 302-306 for determining whether an interactive mode is available for a received television channel, and is therefore independent of any request by a user**), whether the indicator signal is relevant to a user viewing original content provided by the interactive television service provider's network (**see steps 302-310 in Figure 9 for determining an interactive mode based on the received television program**).

Blackketter also discloses that responsive to determining that the indicator signal is not relevant to the user, filtering the indicator signal (**see steps 306 through 310 for when the indicator signal (Figure 11) is not relevant to an interactive mode, the signal is filtered by processing the indicator signal through a second determination step which determines if the indicator signal represents an online mode, wherein the indicator signal is displayed in accordance with an online**

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mode if an online mode is available for the received data). See the updated rejection below.

Blackketter discloses responsive to determining the indicator signal is relevant to the user, displaying on a screen of the user device an indication that the indicator signal has been received, the indication corresponding to the data representing the indicator form (**see steps 312-314 in Figure 9**). *The Examiner further notes that Blackketter discloses that the indicator signal displayed on the display screen 116 (**Figure 1**), wherein the determination step is performed by a user device 108 (**Figure 1**). While the display screen 116 and user device 108 in Figure 1 appear to be separate devices, Blackketter teaches that these devices can be integrated into a single unit (**see Column 3, Lines 60-63**)*

Blackketter also discloses that the subject matter of the alternative content is different from the subject matter of the original content (**see Figures 5-6 for the interactive mode being selected and displaying travel information that is different from the displayed television program**). Applicant has not specifically claimed how the alternative content is “different”, therefore, broadly interpreted the alternative can be different from the original content by the type of information displaying, the format regarding how the alternative content is displayed, or where the data was transmitted from.

Blackketter also discloses that the determining is based at least in part on a content type selected by the user (**see steps 302-306 for determining alternative content based on the television channel currently being viewed**). *The Examiner*

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*further notes that Blackketter discloses that the determining step is disclosed in steps 302-310 in Figure 9, where two actual determinations take place for an interactive mode and an online mode, where if either mode is available an indicator signal is displayed. Prior to the determination steps, a user selects a specification television broadcast signal and displays the television program to the user (**step 302**), therefore Blackketter teaches that the determination steps 306 and 310 only take place after a broadcast television channel is selected by the user, wherein a broadcast television channel is a content type (**also see Column 4, Lines 10-16 for a tuner in the interactive television device 108 for selecting the program, as described in the process of Figure 9**).*

Referring to claim 15, Blackketter discloses that the data representing the indicator form indicates one of a plurality of possible hot key forms (**see Figure 11 for the indicator form (web address) being one of a plurality of possible web addresses**).

Referring to claim 16, Blackketter discloses that the data representing the indicator form comprises a graphic (**see Column 7, Lines 30-32**).

Referring to claim 17, Blackketter discloses that the graphic is displayed on the screen as the indication that the indicator signal has been received (**see step 312 in Figure 9 for displaying an indicator that an interactive mode is available**).

Referring to claim 19, Blacketter discloses that the graphic is not included in the hot key signal (**see Column 4, Lines 30-46 for the user interface graphics being generated by the interactive television device 108 and further note Figure 11 for the hot key signal only containing the data used to determine if an interactive or online mode is available for a television program**).

Referring to claims 76-79, see the rejection of claims 14-17, respectively.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 49 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blacketter et al. (U.S. Patent No. 7,237,253) in view of LeGall et al. (U.S. Patent No. 6,081,263).

Referring to claim 18, Blacketter discloses all of the claim limitations of claim 1, but fails to teach that the graphic is pre-selected by the user.

LeGall discloses that graphics data that can be pre-selected by a user (**see Figure 3 and Column 3, Line 19 through Column 4, Line 10**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify receiver software, as taught by Blackketter, to include GUI display preference settings, as taught by the Examiner's Official Notice, for the purpose of providing a user interface that is aesthetically pleasing and intuitive to a user.

Referring to claim 49, see the rejection of claim 18.

Referring to claim and 80, see the rejection of claim 18.

Claims 45-48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackketter et al. (U.S. Patent No. 7,237,253) in further view of Field et al. (U.S. Patent No. 6,018,764).

Referring to claim 45, see the rejection of claim 1 and further note that although Blackketter teaches a tuner, receiver, and demodulator portion (**see Figure 2**), Blackketter fails to teach a demultiplexer portion.

Field discloses a demultiplexer 205 coupled to a CPU 215 for extracting indication signals in Figure 3 and Column 7, Lines 27-46.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the receiver/client device, as taught by Blackketter, using the demultiplexer, as taught by Field, for the purpose of providing a system for allowing a user to access Web pages and other Internet resources via a broadcast data stream (**see Column 3, Lines 27-30 of Field**).

Referring to claims 46-48 and 50, see the rejection of claims 15-17 and 19, respectively.

(10) Response to Argument

A. Claims 14-17, 19, 76-79 and 81 are patentable over Blackketter (U.S. Patent No. 7,237,253).

1. Blackketter never determines whether available alternate content is relevant to a user, and responsive to such a determination, displays an indicator.

Applicant argues that to determine whether or not to display an indicator, Blackketter only determines whether or not interactive content or online content is available. Blackketter does not determine whether available content is relevant to the user. Blackketter only knows what is available based on information from the network, not from the user. The Examiner respectfully disagrees.

Blackketter discloses whether a certain mode (**interactive or online**) is relevant to the user in Figure 9, wherein step 306 determines if an interactive mode (**which provides alternative content in the form of Internet data**) is available. If the mode is available (**relevant**) then alternate content is displayed to the viewer. If the mode is not available (**not relevant**) the alternate content is filtered and not displayed to the viewer.

Applicant has not specifically stated how the term relevant is being interpreted, while the Examiner has applied the broadest reasonable interpretation of the term "relevant". For example, the Free Online Dictionary states that the definition of relevant means "having direct bearing on the matter in hand" (<http://www.thefreedictionary.com/relevant>). The Examiner notes that Blackketter clearly meets the definition of "relevant" by the teachings of Figure 9, as discussed above.

Further note Figure 10 of Applicant's specification, wherein step 1005 provides the same determination of whether interactive content is displayed to the viewer. If the hot key content is relevant to the user, the hot key content is displayed at step 1010, otherwise the hot key content is filtered/not displayed to the viewer and sent to the bottom of the flow chart. Therefore, Applicant's specification also supports the Examiner's broadest reasonable interpretation.

2. Blackketter never filters an indication of availability. An indication of availability is always displayed whether available alternate content is relevant to a user.

Applicant argues that Blackketter's television device never receives encoded information indicating the availability of an interactive mode, decodes it and then filters it - e.g. to not display and indicator. The same logic applies to the online mode. The

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Examiner respectfully disagrees.

The data structure of Figure 11 indicates if an interactive mode or an online mode is available in columns 352 and 354. Further note step 300 for receiving these availability indicators from a television broadcast network. The data availability indicators are then decoded at step 304 and further filtered at steps 306 and 310 for determining whether the indicator signals are empty or contain data in columns 352 and 354 (**determination of relevancy**), wherein if the data structure is empty of either the interactive or online mode, an indicator (**web address**) is not displayed. Therefore Blacketter teaches receiving encoded information indicating the availability of an interactive mode, decodes it and then filters it (**does not display the indicator/web address**). The Examiner notes that this is accomplished for both the interactive and online mode.

B. Claims 45-48 and 50 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Blacketter (U.S. Patent No. 7,237,253) in view of Field (U.S. Patent No. 6,018,764).

In regards to Applicant's arguments for claims 45-48 and 50, see the Examiner's rebuttal above.

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C. Claims 18, 49 and 80 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Blacketter (U.S. Patent No. 7,237,253) in view of LeGall (U.S. Patent No. 6,081,263)

In regards to Applicant's arguments for claims 45-48 and 50, see the Examiner's rebuttal above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Salce

/Jason P Salce/

Primary Examiner, Art Unit 2421

June 18, 2010

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